EDMONTON
Assessment Review Board

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NOTICE OF DECISION NO. 0098 150/12

COLLIERS INTERNATIONAL REALTY ADVISORS INC
3555 - 10180 101 STREET
EDMONTON, AB T5J 3S4

The City of Edmonton

Assessment and Taxation Branch
600 Chancery Hall
3 Sir Winston Churchill Square
Edmonton AB T5J 2C3

This is a decision of the Composite Assessment Review Board (CARB) from a hearing held on July 24, 2012, respecting a complaint for:

Roll Number	**Municipal Address**	**Legal Description**	**Assessed Value**	**Assessment Type**	**Assessment Notice for:**
2452795	12928 127 STREET NW	Plan: 5573KS Block: 62 Lot: 1 / Plan: 5573KS Block: 62 Lot: 16 / Plan: 5573KS Block: 62 Lot: 2U / Plan: 5573KS Block: 62 Lot: 3 / Plan: 5573KS Block: 62 Lot: 1 / Plan: 5573KS Block: 62 Lot	$3,080,000	Annual New	2012

This decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction, pursuant to Section 470(1) of the Municipal Government Act, RSA 2000, c M-26.

cc: 334154 ALBERTA LTD

Edmonton Composite Assessment Review Board

Citation: COLLIERS INTERNATIONAL REALTY ADVISORS INC v The City of Edmonton, ECARB 2012-002349

Assessment Roll Number:	2452795
Municipal Address:	12928 127 STREET NW
Assessment Year:	2012
Assessment Type:	Annual New

Between:

COLLIERS INTERNATIONAL REALTY ADVISORS INC

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Lynn Patrick, Presiding Officer
Brian Carbol, Board Member
John Braim, Board Member

Preliminary Matters

[1] When asked by the Presiding Officer, the parties did not object to the composition of the Board. In addition, the Board members indicated no bias in the matter before them.

Background

[2] The subject property is a neighbourhood shopping centre built in various years between 1957 and 1989, and is located at 12928 - 127 Street NW within the Athlone neighborhood of northwest Edmonton. There are four buildings on site totaling approximately 22,138 square feet of main floor space, situated on a lot 62,503 square feet in size. It appears to be a quality 04 in average condition except for the restaurant which is rated as fair condition. The service station and canopy have been assessed on a cost basis and there was no issue with the assessment of that portion of the property.

Issue(s)

[3] Is the 2012 assessment of the subject property correct?

Legislation

[4] The Municipal Government Act reads:

***Municipal Government Act*, RSA 2000, c M-26**

> s 467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.
>
> s 467(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration
>
> a) the valuation and other standards set out in the regulations,
>
> b) the procedures set out in the regulations, and
>
> c) the assessments of similar property or businesses in the same municipality.

<u>Position Of The Complainant</u>

[5] The Complainant filed this complaint on the basis that the 2012 assessment of the subject property exceeded its market value. The Complainant stated the subject property had been assessed on the income approach to value and in particular the rental rate applied to the day care (2,400 square foot) was in excess of the market rent. Furthermore the capitalization rate (cap rate) applied to the net operating income had been decreased over the prior year and was currently too low. The combined effect of these two factors resulted in the over-assessment (Exhibit C-1, pgs 12-17). There was no disagreement between the parties that the income approach to value was the appropriate method of assessment.

[6] The Complainant stated this was an old retail plaza that had been constructed on the 'wrong' (going to work) side of 127 Street and was struggling financially as it contained only local, month to month, one-off business tenants who were considered weak by industry standards. The problem was enhanced by the plaza being located adjoining a parcel of vacant land to the south; a bowling alley to the north and by an adult superstore and massage parlour across the street, none of which were supportive in terms of retail traffic. The relatively poor location resulted in difficulties attracting good quality regional tenants and was the principal reason that "typical" rental rates were not achievable. Furthermore one bay had been vacant since 1997. Supporting documentation in the form of "Indicators" was provided (Exhibit C-1, pgs 23-24) to demonstrate that the subject property was located in a low income, run down area that suffered from a high crime rate, double the city average. The Complainant stated that the owner was subsidizing the tenants' operating expenses and provided supporting evidence for his argument in the form of rent rolls, financial statements and an e-mail (Exhibit C-1, pgs 19-32). Supporting evidence was also provided to show there had been no rent increase in year ending July 2011 over the year ending July 2010.

[7] The Complainant stated that there was no dispute with respect to the service station and canopy as this had been assessed on a cost basis and had also been the subject of a recent arbitration settlement, again suggesting non-typical conditions (Exhibit C-1, pg 9).

[8] The Complainant stated that the day care unit had been assessed at a typical CRU rate of $14.75/ square foot which was an increase from the prior years' original assessment of $14.25/ square foot. The Board was informed that the assessment had been successfully appealed and reduced to $10.50/ square foot on a recommendation by the Respondent and an acceptance by the CARB at the 2011 hearing of the subject property. The actual rent in place for this space was then, and is now, at $8.00/square foot.

[9] The Complainant provided a brief assessment history of the subject property wherein it was noted the 2011 assessment had been reduced by 8.0% the previous year as a result of an appeal and the 2012 assessment had subsequently increased by 12% over the revised value.

[10] The Complainant provided a chart of equity comparable properties (Exhibit C-1, pg 15) and supporting information (Exhibit C-1, pgs 33-61) that were leased with national tenants in place to demonstrate that the cap rate for those properties was the same as the subject at 8.0% whereas the subject property has no such national tenants. As the subject property had month to month tenancies, long term vacancies and the continual subsidizing of operating expenses by the owner; the Complainant argued that the subject property was a much more risky proposition than the equity comparables that had strong national tenants in place.

[11] In summation of the testimonial evidence, the Complainant requested the Board to apply the rental rates as exhibited in the "Proposed Assessment" (Exhibit C-1, pg 16) namely $10.50/ square foot for buildings #1 & #2 and $12.00/ square foot for the restaurant portion. The Complainant also requested the capitalization rate be returned to 8.5%; in which case the total property assessment would be reduced to $2,312,474.00.

[12] In rebuttal the Complainant stated that the Respondent's comparable assessments (Exhibit R-1, pg 32) were not comparable to the subject property as they were all substantially superior.

[13] Assessment comparable #1 was 24 years newer (1981) than the subject and was only 7,408 square foot as opposed to the subject's 23,490 square foot. It had a modern style appearance and the economies of scale suggest a much lower rate should be applicable to the subject.

[14] Equity comparable #2 was also smaller and newer than the subject. In addition it was surrounded by retail properties on both sides of 127 Street and was rated a quality #5 building as opposed to the subject being a quality #4. It also had the benefit of two national tenants; Giant Tiger and Subway.

[15] Equity comparable #3 was located in north east Edmonton and was not only a higher quality (#5) building but was substantially newer (1991 = 34 years) than the subject and also had a much lower site coverage ratio. It also had the benefit of at least three national tenants, namely the Dairy Queen; Kentucky Fried Chicken and a Mac's store.

[16] Equity comparable #4 was also located in north-east Edmonton and was also a higher quality building (#5) and effectively newer (1985 = 28 years) than the subject property. It had the benefit of one national tenant, namely Tim Horton's, and was surrounded by retail properties.

[17] The Complainant informed the Board that all four comparables were classified as Plazas or, in one case, a retail store, whereas the subject was classified as a Neighbourhood Shopping Centre. As a result none of the Respondent's comparables were comparable to the subject shopping centre.

[18] The Complainant also provided rebuttal evidence to the Respondent's equity rent survey. Rental equity #1 was located 45 blocks east of the subject, was 17 years newer (1974) and was only 8,429 square foot in size compared to the subject at 17,670 square foot. In addition it was surrounded by retail properties.

[19] Equity comparable #2 was vastly superior to the subject as it was a quality #5, substantially newer (1985 = 28 years) and was anchored by a very strong retail tenant, namely Tim Horton's. In addition it was much smaller being only 7,993 square foot in size and not located close to the subject (45 blocks east).

[20] Rental equity comparable #3 was substantially newer (1978 = 21 years); and smaller (2,850 square foot vs. 17,670 square foot) than the subject and was surrounded by retail properties. It is a two storey building located 45 blocks east of the subject and not comparable.

[21] Rental equity comparable #4 is located close to the subject but is a higher quality (#5) and newer property that had been significantly modernized. It also had the benefit of two national anchor tenants Giant Tiger and Subway and was surrounded by retail properties.

[22] In summation the Complainant argued that the Respondent's comparable equity rents were not comparable to the subject with regard to age, quality, location, tenant strength and also size as demonstrated in the Respondent's chart (Exhibit R-1, pg 43). In particular they were all superior and newer and one was vastly superior. Because of this the net rental rate for the subject property should be reduced to $10.50/ square foot.

[23] The Complainant also requested an increase of the capitalization rate back to the 8.5% it had been in 2011.

<u>Position Of The Respondent</u>

[24] In support of the assessment of the subject property the Respondent presented a chart of *Comparable Equity Rents for Retail Plaza Properties* for four properties (Exhibit R-1, pg 31). All four properties are generally located in north Edmonton. The year built for these properties ranged from 1960 to 1978 compared to the subject built in 1957. The rent for these properties ranged from $13.50/square foot to $16.00/square foot with an average of $14.50/ square foot compared to the subject property at $13.25/square foot. The capitalization rate for these four properties is 8% as is the subject property. Comparable # 4 at 12629-132 Avenue NW is deemed the best comparable by the Respondent as it is located close to the subject on 127 Street.

[25] In support of the assessment per square foot of the subject property, the Respondent included a chart of *Comparable Assessments for the Subject* (Exhibit R-1, pg 32). These comparables are all located in north Edmonton and were built from 1960 to 1980. The subject was built in 1957. These properties ranged in size from 7,408 square feet to 37,034 square feet with an average of 22,819 square feet compared to the subject property at 23,490 square feet. The assessment per square foot for these comparables ranged from $131.97 to $177.70 with an average of $154.25 compared to the subject property at $131.12.

[26] Also, in support of the assessment of the subject property, the Respondent entered in evidence a chart of *Actual Rents for CRUMED Spaces* (Exhibit R-1, pg 43). These were all from Market Area COMMKT280 as is the subject. They were built from 1964 to 1988 compared to the subject built in 1957. The size of the comparables ranged from 1,442 square feet to 2,400 square feet averaging 1,885 square feet compared to the subject CRUMED space at 17,670 square feet. The net actual rents for the comparables ranged from $13.00 to $26.00 /square foot. The subject is at $13.25 /square foot. The Respondent asked the Board to consider comparable # 4 at $14.00/square foot as the best comparable of the four.

[27] In support of the assessment the Respondent included in evidence a *Response to Complainant's Arguments* (Exhibit R-1, pgs 44-45). The Respondent argued the following points:

[28] Regarding the property being on the wrong side of 127 Street, the subject is located on a major traffic route (127 Street and 129 Avenue) and that there are many apartment complexes facing the property that act as a positive influence.

[29] Regarding the weakness of the anchor tenant for the subject shopping centre the Respondent noted that this is a neighbourhood shopping centre and typically such complexes do not have major anchor tenants.

[30] Regarding the application of higher lease rates for assessment purposes than what the subject property lease rates indicate, the Respondent noted that the City applies typical lease rates for assessment purposes that may be higher or lower than actual lease rates for a specific property.

[31] Regarding the assertion by the Complainant that, based on the financial statement of the subject, the market value of the commercial space for the subject should be $10.50/square foot, the Respondent noted that the City has established a triple net lease for the assessment of all retail commercial properties which does not include any operating costs. Some not allowable expenses such as depreciation were included in the financial statement in the Complainant's submission. The Respondent further noted that such costs are fully recouped by the landlord from the tenant.

[32] Regarding the requested decrease of the capitalization rate from 8.5% in 2011 to 8.0% in 2012 and the Complainant's assertion that the new rate was unfairly applied to the subject as it was applied to other retail properties which are far superior to the subject, the Respondent noted that each capitalization rate is applied to the same class of retail properties in a neighbourhood compatible to the Triple Net Lease rate applied to these properties. In support, the Respondent included a map to show that the same cap rate was applied to all similar class of retail properties regardless of age (Exhibit R-1, pg 46).

[33] Regarding the lease for the day care portion of the property, the Respondent noted that this lease rate has been reduced to $10.50/ square foot.

Decision

[34] After reviewing the evidence and argument of the two parties, the decision of the Board is to reduce the 2012 assessment from $3,080,000 to $2,353,500.

Reasons For The Decision

[35] The Board finds that there was no argument with regard to the service station or canopy items as they appear to have been the subject of an arbitration settlement at an earlier date.

[36] With regard to the competitive nature of the subject property, the Board finds the fact that as 12914 – 127 Street has been vacant since 1997 indicates there is a potential problem and it is a negative influence on the balance of the retail space. The presence of a bottle return depot adds to this negative influence as the Board is aware that such users are normally found in industrial or lower quality commercial locations.

[37] With regard to the issue of the rental rate on the retail space, the Board finds the evidence and argument of the Complainant to be more meaningful. The Board was informed that there was an agreement by the Respondent to a reduced rental rate of $10.50/ square foot for the day care space in the subject property.

[38] The Board was satisfied that the sum of $10.50/ square foot fairly represented the value of that space for two reasons;

a. The rental value had been reduced to that amount on a recommendation from the Respondent for the prior year and agreed to by the Complainant. The Board was persuaded by the evidence of the Complainant that there was no evidence of an actual rental value increase in the subject property (Exhibit C-1, pg 13) and the Respondent provided no meaningful evidence of the rental level as at July 1, 2011 or if there had been a rental increase since July 1, 2010. The subject retail space and restaurant were all on month to month tenancies and if there had been a market rental rate increase there is no known reason why the rental rates for the subject property would not have increased in line with this trend, if rents are market driven.

b. The Board considered the equity rents provided by the Respondent and found that all of the comparables were superior to the subject in terms of a combination of one or more of the following attributes, namely; location, age, quality and presence of one or more national tenants. Only one of them was located in the subject neighbourhood and is in a superior location, was of a higher quality, had national tenants and had been modernized. As such the Board placed little weight on this evidence other than it indicates the rental value of the subject property is substantially lower than the rental values exhibited by the Respondent's *Comparables Equity Rents for Retail Plaza* chart (Exhibit R-1, pg 31) and therefore supports a reduction.

[39] Having regard to the rental rate apportioned (agreed between the two parties) to the day care space, the Board found that the other "retail" space in the subject property was of similar value as no evidence was provided by either party to distinguish between the varying users of the space. The spaces could be used for a wide variety of users. As a result the Board concluded that all the retail space should be assessed at the same rate with a higher rate applicable to the restaurant space only.

[40] Although comparable market rental rates were not provided by the Complainant, the most meaningful evidence of rental rates was provided by the agreement between the Complainant and Respondent regarding the day care space. The balance of the retail space appears to be a combination of smaller areas like the day care, the exception being the liquor store at 13,000 square foot.

[41] In conclusion to the rental rate issue the Board finds the best evidence of value to be the $10.50/ square foot as provisionally agreed by the two parties. When applied to the total retail space of 19,950 square foot (Exhibit C-1, pg 16), this produced a combined net operating income of $177,344. The Board also found that there was no meaningful evidence provided with respect to the restaurant space other than the actual gross lease in the sum of $16.69/square foot. (Exhibit C-1, pg 21).

[42] The Board was persuaded by the Respondent's evidence relating to the restaurant equity rental rate as the most meaningful comparable space quoted (Exhibit R-1, pg 31) because it is located close to the subject and, as it is superior, supports a lower value for the subject. The Board finds that no comparable restaurant lease information was supplied by the Complainant and the $12.00/ square foot rate suggested by the Complainant had no support other than the calculation of a net rent from gross lease information. The Board concluded the Complainant had not met the onus requirement with respect to the restaurant portion.

[43] With regard to the cap rate the Board finds the evidence of the Respondent to be more persuasive than the evidence of the Complainant. The Respondent provided a map demonstrating that all retail plaza properties in the same neighbourhood had a cap rate of 8.0% applied to them, including the subject. The Board finds this to be equitable.

[44] The board placed less weight on the evidence of the Complainant (Exhibit C-1, pg 15) as only one of the comparables; a power centre located at 12504 – 137 Avenue; is located in the same neighbourhood as the subject and is assessed at 7.5% which provides support for a higher overall cap rate. The Board agrees that the subject should be assessed with a higher cap rate than the power centre property.

<u>Dissenting Opinion</u>

There were no dissenting opinions.

Heard commencing July 24, 2012.

Dated this 22nd day of August, 2012, at the City of Edmonton, Alberta.

Lynn Patrick, Presiding Officer

Appearances:

Stephen Cook, Colliers International Realty Advisors Inc.
for the Complainant

Gail Rookes, Assessor, City of Edmonton
Ryan Heit, Assessor, City of Edmonton
for the Respondent